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UNCLAS SECTION 01 OF 03 THE HAGUE 001859

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STATE FOR EUR, EB, D/HS, S/CT
DHS FOR INTERNATIONAL AFFAIRS - FRANCIS KINNEY
JUSTICE FOR DAAG SWARTZ AND OIA/JUDI FRIEDMAN
BRUSSELS FOR KERBER, WONG, RICHARD

E.O. 12958: N/A

TAGS: [PTER](#) [ASEC](#) [KCRM](#) [CASC](#) [XG](#) [PREL](#) [ECON](#) [ETRD](#) [ETTC](#) [EFIN](#) [NL](#) [EUN](#)
SUBJECT: COUNTERTERRORISM IN THE NETHERLANDS: ACQUITTALS
INSPIRE PUSH FOR TOUGHER LEGISLATION

REFS: A) THE HAGUE 1453; B) 2002 THE HAGUE 3525 and 3531; C)

THE HAGUE 1134 AND 3013

1. (SBU) Summary: Recent acquittals of Islamist terrorist suspects in two high profile cases (see Ref A) and increasing realization that terrorist threats affect the Dutch homeland have prompted the government of the Netherlands to propose more measures to strengthen counterterrorism legislation and law enforcement. In a June 24 letter to parliament, Justice Minister Piet Hein Donner asked for expanded definitions of terrorism-related offenses, closing of several terrorist-financing loopholes, more restraints on terrorist networks and improved cooperation among Dutch law enforcement institutions. The parliament is expected to endorse the proposals when it resumes session at the end of August. If endorsed, legislation will be drafted and submitted to the Council of State and parliament for approval in 2004 or later. Despite broad acceptance of the proposals, consensus on specific changes will take considerable effort and time. The proposals include many - but by no means all - measures we have urged the Dutch to implement. We feel they are overall positive steps toward effectively combating terrorism, but in some areas do not go far enough. End Summary.

TERRORISM A SERIOUS THREAT

2. (SBU) The recent acquittal in Rotterdam of all 12 suspects charged with support of a terrorist organization (Ref A) and a similar December 2002 acquittal of four men allegedly involved in a plot to bomb the US Embassy Paris (Ref B) revealed inadequacies in Dutch law and practice for building an evidentiary case, especially with regard to the use of intelligence. The acquittals coincided with heavy media attention in May 2003 to the discovery of jihad recruiting at a mosque in the southern city of Eindhoven. In this atmosphere, Justice Minister Donner (CDA-Christian Democratic Appeal) submitted a paper to the Cabinet on June 20 and a letter to the parliament on June 24 outlining proposals to deal more effectively with terrorist activities. The introduction to the paper described the terrorist threat within the Netherlands as serious and "anything but temporary or simple." It also reiterated Dutch support for international cooperation and their desire to play a prominent role in combating terrorism, an attitude evidenced by their pioneering implementation of the Container Security Initiative. (See Ref C)

3. (SBU) Shortly after September 11, 2001, the Dutch government enumerated a 43-point Anti-Terrorism Plan of Action and in November 2002 enacted a Terrorist Offenses Bill. Those measures set a framework for improved Dutch anti-terrorism protection and prosecution. However, prosecutors and other law enforcement officials agree that the post-9/11 measures aren't enough and the recent terrorist suspect acquittals proved their point. Donner's new proposals are a continuation of the process of developing the Plan of Action and Terrorist Offenses Law but go further than previous modifications. The current proposals clearly identify two primary areas where they need to do more: terrorist financing and law enforcement cooperation for prosecution.

PROPOSED CHANGES

4. (SBU) Donner's proposals included measures designed to expand definitions of terrorism related offenses, close terrorist financing loopholes, restrain terrorist networks and improve cooperation among law enforcement institutions. Some proposals are recommended legislative changes, others policy formulations. Among the more significant proposals are the following:

- 1A. Making recruiting for jihad a new, separate, criminal offense carrying a maximum of four years imprisonment.
- 1B. Making conspiracy to commit a terrorist offense a separate criminal offense.
- 1C. Redefining criminal "participation" in an organization that pursues terrorism to include "providing financial or other material support."
- 1D. Allowing courts to ban terrorist organizations on asset freeze lists and making support to a banned organization a criminal offense.
- 1E. Changing the 1977 Sanction Act to provide tools to restrain activities of non-corporate terrorist networks.
- 1F. Improving the capabilities for intelligence gathering by the AIVD (Dutch intelligence agency)
- 1G. Better coordination of activities and information sharing between intelligence services and the police.
- 1H. Developing a new system for protection of critical infrastructure and persons.
- 1I. Making more and better use of mechanisms to ensure transparency and monitoring of non-profit organizations.
- 1J. Increasing efforts to integrate immigrants into Dutch society to prevent radicalization and extremism.
- 1K. Urging the EU to make combating terrorism a cooperative priority.
- 1L. Creating a Joint Committee to Combat Terrorism made up of all relevant departments and agencies.

Some Things Better Left Unsaid - For Now

15. (SBU) The Justice Minister's proposals did not include specific measures to facilitate the use of intelligence information as evidence. The recent acquittals of terrorist suspects were based in large part on the courts' rulings that uncorroborated intelligence information could not be used as evidence. Public and political sentiment after the acquittals favored changing the law to permit the use of intelligence as evidence in certain circumstances. The Secretary General of the Ministry of Justice, Joris Demmink,

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said in a recent meeting with Assistant Secretary of State Beth Jones that the Ministry of Justice was "well informed at every stage" of those cases that the evidence was "thin or based on intelligence, which would be difficult to use for conviction." Some experts believed the government was using the case to demonstrate the need for new laws.

16. (SBU) Donner's proposal, however, skirted the issue. The MOJ's explanation is that this issue is still under judicial review (the prosecutor in the Rotterdam case has filed an appeal against the court's decision on using intelligence as evidence). If the appellate court accepts the intelligence information as evidence or describes circumstances under which it could be used, then legislative changes may not be necessary. The June 24 proposal therefore only expresses an intention to promote better coordination of activities and information sharing between intelligence services and the police (4.G. above) - an important point but not specific. Even this has provoked warnings from parliament against the risk that uncorroborated intelligence could be used as evidence in court.

COMMENT: THE RIGHT DIRECTION

17. (SBU) The proposed measures are significant and positive steps in tightening the Dutch ability to combat terrorism. Specifically in the area of terrorist financing, the proposals to redefine criminal participation to include financial and material support, to change the 1977 Sanction Act and to require more transparency and monitoring of non-profits are all topics which we intend to address with the Netherlands at the Financial Action Task Force to develop best practices. The proposal to permit "banning" of terrorist organizations on freeze list seems to be a more political than substantive change. In the area of terrorist prosecution, adding recruitment for jihad to the list of terrorism offenses is an important concept in the Netherlands which includes a large immigrant Muslim

population. However, this will undoubtedly create controversy when actual legislative language is proposed given the political sensitivities of the Dutch debate on social integration.

18. (SBU) The proposal's lack of specific recommendations for the use of intelligence information at trial is disappointing given the centrality of this issue in the recent terrorist suspect trials. It appears that the Dutch will take on this matter in stages. This caution is probably necessary given both political constraints and respect for the independence of the judiciary while it reviews the cases. His proposals were also silent on making more effective use of infiltrants in criminal investigations. There are strong political sensitivities in the Netherlands against their use. Minister Donner announced in May that he is prepared to allow the use of infiltrants in terrorist cases under special circumstances yet to be determined. This issue remains a frustrating limitation on Dutch investigations and on bilateral law enforcement cooperation.

19. (SBU) The Dutch government, a supportive ally in the fight against terrorism, clearly recognizes the deficiencies of some of its law enforcement mechanisms and is willing to make changes. Facilitating these changes remains our biggest challenge in helping the Netherlands effectively fight terrorism. Embassy will continue to work closely with the Dutch on these difficult issues. End Comment. RUSSEL